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5 Attorney for Plaintiff  
VICKI NIHART

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

10 VICKI NIHART, an Individual,

11 Plaintiff,

12 v.

13 NATIONAL PARK SERVICE, a division of  
14 the UNITED STATES DEPARTMENT OF  
INTERIOR, and DOES I through X,,

15 Defendants.

Case No.: 2:12-cv-291-APG-GWF

ORDER

MOTION TO ALLOW DR.  
KURUVILLA TO CLARIFY  
TESTIMONY BY AFFIDAVIT OR  
ALTERNATIVELY TO RECALL  
DR. KURUVILLA TO TESTIFY  
TELEPHONICALLY AND  
MOTION FOR ORDER  
SHORTENING TIME TO  
RESPOND TO THIS MOTION

17 MOTION TO ALLOW DR. KURUVILLA TO CLARIFY TESTIMONY BY  
18 AFFIDAVIT OR ALTERNATIVELY TO RECALL DR. KURUVILLA TO TESTIFY  
19 TELEPHONICALLY AND MOTION FOR ORDER SHORTENING TIME TO  
20 RESPOND TO THIS MOTION

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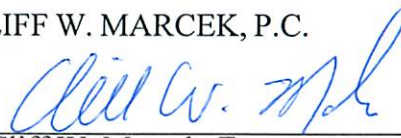
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1 COMES NOW Plaintiff Vicki Nihart, by and through her attorney of record, Cliff W.  
2 Marcek, Esq., and hereby brings this **MOTION TO ALLOW DR. KURUVILLA TO**  
3 **CLARIFY TESTIMONY BY AFFIDAVIT OR ALTERNATIVELY TO RECALL DR.**  
4 **KURUVILLA TO TESTIFY TELEPHONICALLY AND MOTION FOR ORDER**  
5 **SHORTENING TIME TO RESPOND TO THIS MOTION** on October 3, 2014.

6 Dated this 22 day of September, 2014.

7 CLIFF W. MARCEK, P.C.

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16 Attorney for Plaintiff  
17 VICKI NIHART  
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**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF HER MOTION TO ALLOW DR. KURUVILLA TO CLARIFY TESTIMONY BY  
AFFIDAVIT OR ALTERNATIVELY TO RECALL DR. KURUVILLA TO TESTIFY  
TELEPHONICALLY AND MOTION FOR ORDER SHORTENING TIME TO  
RESPOND TO THIS MOTION**

On August 28, 2014 Plaintiff called Dr. Thomman Kuruvilla to testify about the treatment she received. Throughout Dr. Kuruvilla's direct testimony and cross examination Dr. Kuruvilla expressed that Ms. Nihart had not experienced pain in the right foot prior to the accident August 15, 2010 at the Callville Bay Low Water Boat Launch Ramp. Toward the end of his redirect testimony, Dr. Kuruvilla made a comment regarding chronic pain in the right foot.

After speaking with Dr. Kuruvilla to clarify the inconsistent statements, it was determined that Dr. Kuruvilla misspoke when he testified about chronic pain. His intention was to comment on the hammertoe being a chronic condition rather than expressing that Plaintiff had experienced chronic pain in her right foot.

Plaintiff seeks to have Dr. Kuruvilla clarify the discrepancy of his testimony on the record. Due to the nature of Dr. Kuruvilla's profession it is highly inconvenient on him and his clients to require him to appear in person to clarify this minor discrepancy in his testimony. Plaintiff expects that the total time required to clarify this discrepancy and any subsequent cross-examination would be fifteen minutes or less.

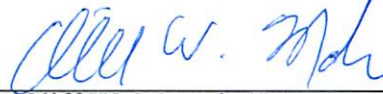
This trial is scheduled to resume on October 3, 2014. Dr. Kuruvilla has surgeries scheduled for that date. It would be highly inconvenient to both him and his patients to require him to appear in court.

It is within the discretion of the Judge to allow a witness to be recalled for the purposes of clarifying testimony. See *Great Lakes Airlines, Inc. v. Civil Aeronautics Board*, 291 F.2d 354, 364 (9th Cir. 1961). Plaintiff respectfully requests that this Court allow Dr. Kuruvilla to clarify the discrepancy in his testimony by providing the court with an affidavit on this issue. Alternatively, Plaintiff requests Dr. Kuruvilla be allowed to testify telephonically on this issue.

1 Additionally, Plaintiff seeks an Order Shortening Time for Defendant to Respond to  
2 this Motion due to the impending necessity to have this issue resolved.

3 Dated this 22 day of September, 2014.

4 CLIFF W. MARCEK, P.C.

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14 VICKI NIHART

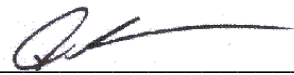
15 **ORDER**

16 \_\_\_\_\_ **IT IS SO ORDERED** that Dr. Thomman Kuruvilla be allowed to clarify  
17 his testimony through an affidavit to this Court.

18 \_\_\_\_\_ **IT IS SO ORDERED** that Plaintiff be allowed to recall Dr. Thomman  
19 Kuruvilla and have him testify telephonically on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2014.

20 ~~\_\_\_\_\_~~ **IT IS ORDERED** that Defendant respond to Plaintiff's Motion no  
21 later than September 29, 2014.

22 Dated: September 23, 2014.

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24 UNITED STATES DISTRICT JUDGE  
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